

IN SENATE OF THE UNITED STATES.

JANUARY 8, 1840.

Submitted, and ordered to be printed.

Mr. SMITH, of Indiana, submitted the following

REPORT:

[To accompany bill S. No. 141.]

The Committee on Roads and Canals, to which was referred the resolution of the Senate of the 3d instant, in the following words: "Resolved, That the Committee on Roads and Canals be instructed to inquire what legislation, if any, is necessary to confirm to the State of Indiana the land claimed and selected by her under the provisions of the act of Congress of 2d March, 1827, entitled 'An act to grant a certain quantity of land to the State of Indiana, for the purpose of aiding the State in opening a canal to connect the waters of the Wabash with those of Lake Erie,' for that portion of the canal between the mouth of the Tippecanoe river and Terre Haute; and that Document No. 32, in vol. 3 of the House of Representatives executive documents of the 25th Congress, be referred to said committee:" have had the subject under consideration, and make the following report:

The document referred by the resolution is voluminous, and can only be noticed by the committee, to sustain the views entertained on the subject matter of inquiry, as the committee is well apprized that it will conduce to a full understanding of the questions involved, to condense the facts as much as is consistent with a fair development of the questions submitted by the resolution.

The facts of the case are believed to be these:

A single glance at the map of the United States will at once exhibit the great importance, in a state and national point of view, of connecting by a canal or railroad the navigable waters of the Wabash with those of Lake Erie; and by such connexion opening one continuous chain of uninterrupted internal communication from New Orleans to New York and Philadelphia, through the Wabash and Mississippi rivers to the south, and through the lakes, the New York and Pennsylvania canals, and the Hudson, to the east.

At an early day, so apparent was the importance of this single link in the great chain, that its construction became an object of State and national solicitude, enterprising individuals had made examinations of the country, and entertained little doubt of the practicability of the work. A United States engineer, Mr. Stansbury, was detailed for the purpose of making a survey of the route, which he performed by running a line from the falls
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of the Maumee of the lakes to the mouth of the Tippecanoe river on the Wabash, giving it as his opinion, that at those points the canal might terminate, supposing he had arrived at a point of uninterrupted navigation at each extreme of the line, and reporting the entire practicability of the work.

Congress, on the 2d March, 1827, passed an act on the subject, the first two sections of which, being all that is material to the question submitted to the committee, read as follows:

"SEC. 1. That there be, and hereby is, granted to the State of Indiana, for the purpose of aiding the said State in opening a canal to unite at navigable points the waters of the Wabash river with those of Lake Erie, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, from one end thereof to the other; all the said lands shall be subject to the disposal of the Legislature of said State, for the purpose aforesaid, and no other: *Provided*, That the said canal, when completed shall be and for ever remain a public high way for the use of the Government of the United States, free from toll or other charge whatever, for any property of the United States or persons in their service passing through the same: *Provided*, That said canal shall be commenced within five years and completed in twenty years, or the State shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchase under the State shall be valid.

"SEC. 2. That, so soon as the route of said canal shall be located and agreed on by the said State, it shall be the duty of the Governor thereof, or such person or persons as may have been or shall hereafter be authorized to superintend the construction of said canal, to examine and ascertain the particular lands to which the said State will be entitled under the provisions of this act, and report the same to the Secretary of the Treasury of the United States."

The eastern portion of the canal line running through the State of Ohio, down the Maumee, the State of Indiana relinquished to that State and she accepted the grant for that portion of the work, and obliged herself to comply with the requirements of the act of Congress, placing herself in the same relative position to the General Government that Indiana stood by the act above referred to.

It is important here to refer to the condition of the country through which the canal was to run at the time the above act was passed, for the purpose among other things of explaining, and giving the true meaning to, the terms employed in the act. A portion of the lands were public lands, another portion was still subject to the Indian title, a portion had previously been granted away by the Government, and another portion had been sold by her, so that at the time of the passage of the act, it was obvious to all that each alternate section was not at the disposal of the Government, hence the terms used in the act "*equal in quantity* to one half of five sections in width," "from one end thereof to the other," were clearly intended to grant to the State, the entire *quantity* of land whether it was within the five miles subject to the operation of the act or not, as the State had to construct the work, reserving, however, to the General Government each alternate section of all the lands that might be subject to the grant within the five miles of the line, upon the natural supposition that lands thus situated would be enhanced in value by the construction of the work.

The States of Indiana and Ohio each adopted the line of the canal as run by Stansbury, the United States engineer, in the language of the act of the State of Indiana, "for the time being;" the falls of the Maumee at the east, and the mouth of the Tippecanoe river on the Wabash, being the *supposed* navigable points at which the waters of the Wabash were to connect with those of Lake Erie by the canal, the lands for this portion of the canal were selected by those States: what lay within the five miles of the line were taken in alternate sections, and the deficiency was taken from other Government lands: the whole of these lands were returned to the proper department and confirmed. Thus far there is no matter of controversy between the parties, so far as the committee has understood. Upon a careful examination on the part of the authorities of the State of Ohio it was found, that in order to complete the work so as to connect the waters at a point of *uninterrupted navigation*, it became necessary to extend the eastern division of the canal from the falls, the point selected by Stansbury, down the river to Maumee bay. This extension was made, and the Government ratified the location and extension, and as the lands on the line of the canal had been disposed of, Congress authorized a selection of other lands equal in quantity in lieu of those granted by the before recited act of Congress of 2d March, 1827. These lands were selected by Ohio for the extension from the supposed point of navigation to the Maumee bay, and returned to and confirmed by the proper department. Hence there is no matter of controversy, so far as the State of Ohio is concerned; the whole grant to that State, deriving her claim though the grant to Indiana, has been made and received in good faith.

The committee having given this brief history of the matters which precede, and upon which is based, the immediate question submitted to them, proceed to the main question in the inquiry.

The proper authorities of the State of Indiana, like those of Ohio, having made the necessary examinations as to the point of termination of the canal on the Wabash, found that it was absolutely necessary, in order to connect the canal with the Wabash, at a point of *uninterrupted navigation*, to extend it down the river from the mouth of the Tippecanoe river to Terre Haute, and proceeded to make that extension, and at that point connected the work by a lock with the Wabash; like the other extension in Ohio, the lands within the five miles of the line had been mostly, if not altogether, disposed of. The State of Indiana, like that of Ohio, claimed to select other lands in lieu of those so disposed of, from Government lands, equal in quantity; and the Governor of the State, by virtue of the 2d section of the act of 2d March, 1827, above recited, has selected and returned to the department the quantity of land granted for that portion of said canal, between the mouth of the Tippecanoe river and Terre Haute, of other lands in lieu of the lands sold upon the line by the Government. The document referred by the resolution, shows that the Commissioner of the General Land Office, from feelings of delicacy, and out of abundant caution, did not think proper to recognise the right of the State to the selection, nor her authority to extend the canal, nor her claim to lands to aid her in that extension, until the matter had been submitted to the Secretary of the Treasury, and the opinions of the Solicitor of the Land Office and the Attorney General had been obtained. Thus it appears to the committee that every cautionary step has been taken by that officer to guard the interest of the United States, as well as to obtain a fair expres-

sion of a disinterested opinion on the subject, that the importance of the matters involved required. The Commissioner of the General Land Office, in presenting the papers to the Secretary of the Treasury, put several queries to that officer, which were referred for answer by him to the Solicitor of the Land Office and the Attorney General. The first of which involves the real merits of the question, as follows: "Was the State estopped or precluded from extending the canal from the mouth of the Tippecanoe river to the Wabash at Terre Haute, so as to be entitled to the additional quantity of land asked for under the act of 2d March, 1827?" This is the important question to be decided; the other questions put are merely incidental. To this question Attorney General Butler gives the following response: "The first of the above questions must, in my opinion, be decided in the negative. I think that the proposed extension of the canal, from the mouth of the Tippecanoe, (the first selected point of termination on the Wabash,) to Terre Haute, as now proposed, is a measure fully authorized by the act of Congress of the 2d of March, 1827, provided it be admitted, as is doubtless the fact, that such an extension is necessary to the completion of a convenient and useful navigation between the waters of the Wabash and those of the lake; in construing this law, we are to have special regard to the purposes intended to be accomplished by it. They evidently were to encourage the State of Indiana, to construct a canal between the navigable waters of the Wabash and the lake, it being supposed by the law makers that such a navigable communication would promote the interests of the United States, as well as those of the State, by enhancing the value of the public lands in its vicinity, and by furnishing increased facilities for the transportation of the troops and property of the United States from place to place in the region through which it passed; hence the engagement to grant to the State a certain quantity of land along the route of the canal, and hence, also, the stipulation that the United States should have a perpetual right of way over the canal for the transportation of their property, and of persons in their service.

"In reference to such a law, it appears to me to be too narrow a construction of it to hold that the State is concluded as to its point of termination on the Wabash, by the selection made in 1829. The great object of the law was to promote the opening of a communication from the lake to the *navigable* waters of the Wabash: nothing short of this will effectuate the intents of its authors, or secure to the United States the benefits intended to be derived from it. If, therefore, it is found, by further investigation, that, to secure a convenient and useful means of communication between the navigable waters of the river and those of the lake, the canal should be extended to Terre Haute, then, I think it is not only competent for the State of Indiana, within the true meaning of the act of Congress, but due on the part of that State, that such an extension should be made. If it be said that the United States are satisfied with the communication already opened, and that the construction above given makes the State the sole judge of the question whether the extension is really necessary or not, my answer is, that the power and duty of fixing the terminating point were left, by the act of 1827, exclusively to the State Legislature, and the fact that the greater part of the expense of constructing the canal will fall upon the State is a sufficient guarantee that the extension of the canal to a lower terminating point will not be resolved upon unless it be really deemed necessary to the usefulness of the work." Mr. Whitcomb, the Commissioner

of the General Land Office, upon the same point, after giving the reason and facts that sustain his opinion upon a review of the opinions of the Solicitor of the Land Office, says, "I am, therefore, of opinion that the State of Indiana not only had the right to extend the route of the canal from the mouth of Tippecanoe to Terre Haute, but that it is due to the United States that the proposed extension to a navigable point should be recognised." The committee has extended the extracts from these opinions not merely because they are the opinions of those who are supposed to be disinterested and impartial judges of the question submitted, but because the committee think the opinions advanced fully sustained by the facts of the case. Indeed, it would seem to the committee evident that as the points at which the canal was to terminate by the terms of the act, were at "navigable points," and as these points were to be determined by the State, and the State having determined that Terre Haute *is the navigable point* contemplated by the law, the extension was imperative on the State, and all the corresponding obligations on the part of the Government under the act of 2d March, 1827, followed. The right of the State therefore to the additional land for that portion of the canal between the mouth of the Tippecanoe and Terre Haute being admitted, the last question arising under the resolution is "What legislation, if any, is necessary to confirm to the State of Indiana the land claimed and selected by her" for this portion of the canal? This question must be answered by a reference to the 2d section of the act of 2d March, 1827, which provides "that so soon as the route of said canal shall be located and agreed upon by the said State, it shall be the duty of the Governor thereof, or such person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular lands to which the said State will be entitled under the provisions of this act, and report the same to the Secretary of the Treasury of the United States." This section would certainly authorize the conclusion that the Governor of the State had the power to make the selections for the State under the provisions of the act, or what is meant by the terms, to "*examine and ascertain the particular lands to which the State will be entitled,*" if the power of selecting is not to be understood by them? Such is the interpretation given to the act by the State authorities of Indiana, and the selections have been made and returned to the department in accordance with that construction. The committee perceive that the Attorney General has expressed the opinion that the right of selecting other lands in lieu of those within the limits of the five miles, is not conferred by the act of 2d March, 1827; and as, in the case of the State of Ohio, a special act was passed, authorizing the selections to be made of other lands, and inasmuch as it is of the greatest importance that every doubt should be removed as to the legality of the selection and the right of the State to dispose of the land to aid her in the final completion of the work, to put the matter finally and for ever at rest, the committee adopt the course which was pursued in the case of Ohio, in relation to the eastern termination, and report a bill to confirm to the State of Indiana the lands selected, reserving the right to actual settlers at the time the selections were made, of pre-emption under the pre-emption laws in force, and authorizing other selections, should any of the lands already selected be adjudged to pre-emptors.

All of which is respectfully submitted.

